IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

COMPANY PETITION NO.95 OF 1999

Devi Construction Company Pvt. Ltd. ..Petitioner.
Vs.
Patheja Brothers Forgings
& Stampings Ltd. ..Respondent.

....

Mr. Kedar Shukla i/b Udwadia, Udeshi & Berjis for the Petitioner.
None for the Respondent.

....

CORAM: **DR. D.Y. CHANDRACHUD, J.**

16th June, 2007.

P.C. :

1. The claim of the Petitioner in the Company Petition is based on a statutory notice dated 15th October, 1998 by which a demand was made for the repayment of an amount of Rs.1,88,66,979/- in respect of construction work carried out for the company in connection with its project at Chakan, Rajgurunagar, District Pune. Though a statutory notice was served on the company no reply was filed thereto.

2. When the Petition came up for admission on 9th November,

2000 the learned Single Judge observed that though notice of the acceptance of the Petition has been served and an affidavit of service has been filed, the Respondent - Company was not present before the Court nor had it denied the correctness of the claim on the basis of which the Petition was instituted. Accordingly, the Petition was directed to be admitted.

3. The company had moved the B. I. F. R. in proceedings under the Sick Industrial Companies (Special Provisions) Act, 1985 and by an order dated 17th April, 2003 the B. I. F. R. has come to the conclusion that the reference stands abated in terms of the third proviso to Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 since secured creditors representing more than 3/4th in value of the amount outstanding against financial assistance disbursed to the company had taken possession of the secured assets of the company under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The reference before the B. I. F. R. has thus abated.

3. No reply has been filed by the company to the Petition. As already noted earlier, no reply was filed to the statutory notice before the winding up proceedings came to be instituted. In these circumstances, an order of winding up would have to be passed and is accordingly passed. The Company is unable to pay its debts. The Company Petition is made absolute in terms of prayer clauses (a) and (b).